APR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 103 of 2002

Keshav Sahu

Vs.

State of Chhattisgarh

JUDGMENT

Judgment for consideration

Judge
16.09.2007

Hon'ble Shri Justice L.C. Bhadoo, J,

I agree

Sd/-
L.C. Bhadoo
Judge

Post for Judgment: 17.09.2007

Sd/-
Sunil Kumar Sinha
Judge

(24)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 103 of 2002

APPELLANT Keshav Sahu, aged about 23 years, S/o Dev Prasad Sahu, resident of Devarghatta, Thana Dabhra, District Janjgir (Chhattisgarh)

Versus

RESPONDENT State of Chhattisgarh through Police Station Dabhra, District Janjgir (Chhattisgarh)

(Appeal under Section 374 (2) of Cr.P.C.)

Appearance:

Shri Vijay Kumar Deshmukh, counsel for the appellant.

Shri U.K.S. Chandel, Panel Lawyer for the State/ respondent.

(DIVISION BENCH)

HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

JUDGMENT
(17.09.2007)

Following judgment of the Court was delivered by

Sunil Kumar Sinha, J.

(1) Challenge is made to the judgment of conviction and order of sentence dated 13.12.2001 passed in S.T. No. 5/2001 by the IIIrd Addl. Sessions Judge (F.T.C.) Raigarh, whereby, the said Court, after holding the accused/appellant guilty of offence punishable u/Ss 302, 364 & 201 of I.P.C., sentenced him to undergo life imprisonment and R.I. for 3 years – 3 years with a further stipulation to run the sentences concurrently.

(2) Brief facts are that the deceased namely Sameer Agrawal, aged about 6 years, was studying in Saraswati Shishu Mandir, Kharsiya. He was son of Shiv Kumar Agrawal (P.W.7) and nephew of Yogesh Kumar Agrawal (P.W.1). The accused was working as Jeep driver in the family of deceased and he used to take the

children of their family to the school by Jeep. But on account of some dispute regarding theft of diesel, he was removed from the services 3 months prior to the date of incident. The case of the prosecution is that on 8.11.2000 the deceased had gone to school. When the driver of the family went to bring the deceased from the school he did not meet him. When he asked to the staff members, they told him that at about 1.00 a.m., the accused had come to the school and had said that the mother of the deceased is ill and on this pretext he had taken the deceased from the school. On this information, Yogesh Kumar Agrawal suspected that he must have kidnapped the deceased and he lodged a written report (Ex.P.1) with the Police, on which, an offence u/s 364 I.P.C. was registered under Ex.P.2 and the investigation commenced.

(3) During the course of investigation, they went to the house of the accused but the accused was not there. They could get the driving licence of the accused in which his photograph was there. The photograph was shown to the teachers of the school, who told that he was the person who has taken the boy with him. The further case of the prosecution is that after the said incident, the accused had gone to Raigarh and when he was taken into custody at Raigarh, he gave memorandum (Ex.P.3) before Suresh Jain, Asst. Sub Inspector (P.W.9) and two other witnesses Shiv Kumar Agrawal (P.W.7) & Bhaisajlal Yadav (P.W.2) disclosing that after committing murder of the deceased, he has kept the dead body at a particular place on a hill near Kharsiya and has also kept the Bicycle, which he had used for taking the boy, in the house of Dadu driver in Mohall Hamalpara, which can be recovered from those places. On the basis of said discovery made by the accused, at his instance, the dead body of the boy was recovered and taken into possession by Police under Ex.P.4. The Investigating Officer gave notice to the Panchas under Ex.P.8, prepared inquest on the body of deceased under Ex.P.9, the body was sent for postmortem examination to Govt. Hospital Kharsiya under Ex.P.10-A. The postmortem examination was conducted by Dr.B.S.Chandel (P.W.5), who prepared his report Ex.P.10. He observed that the

deceased was young boy wearing school dress white shirt, Banian, Underwear, Half pant & belt, Shocks and shoes. He noticed the following injuries:

(i)	One lacerated wound on the left eyebrow transversely placed 5 x 2 x 2 cm. Underlying fractured bone and brain material was seen.
(ii)	One lacerated wound on right side of forehead just above eye brow 5 x 1 x 1 cm.
(iii)	One lacerated wound on the left side nose 1 x 1 cm.
(iv)	One lacerated wound on forehead 1.5 x 1 cm.
(v)	One lacerated wound on head on right side over parietal region in size of 5 x 1 x 1 cm.
(vi)	One lacerated wound on the back of head over occipital region in size of 4 x 1 x 1 cm
(vii)	One contusion over the centre of neck on trachea in size of 2 x 2 cm.
(viii)	One contusion on left side of neck 3 x 1 cm.
(ix)	One contusion on the right side of neck in size of 2 x 2 cm.
(x)	Minute multiple abrasion on both sides of neck were present.

On internal examination, he found that there were fractures in left and right frontal bone. The brain membrane was ruptured and the front part of the brain was damaged. The blood clot was present on the base of scalp. There was congestion in the trachea having blood clots. Some undigested food was present in the stomach. All these injuries were antemortem in nature and were caused by hard and rough object[redacted]. The doctor opined that cause of death was coma due to injury to the brain and the duration was about 12 – 24 hours.

(4) The driving licence of the accused was also seized from the possession of Yogesh Kumar Agrawal (P.W.1) under Ex.P.5. The blood stained soil, plain soil and 3 big stones were seized from the

place of occurrence under Ex.P.6. As per the memorandum, the bicycle was seized under Ex.P.7. The site plan was prepared by Patwari under Ex.P.11. Based on the above information, the merg intimation was recorded under Ex.P.12 and Dehati Nalishi was recorded under Ex.P.13.

(5) After completion of usual investigation, the charge sheet was filed in the Court of Judicial Magistrate, First Class, Raigarh, who in turn committed the case to the Sessions Judge, Raigarh from where the case was transferred to the 3rd Addl. Sessions Judge (F.T.C), Raigarh, who conducted the trial and convicted the accused/appellant as aforementioned.

(6) Learned counsel for the appellant argued that there is no direct evidence in this case and the circumstantial evidence set-forth by the prosecution is not sufficient to hold the appellant guilty of the aforesaid offences. He referred to two decisions of the Apex Court rendered in the matters of ***C.Chenga Reddy and others –vs- State of A.P., (1996) 10 S.C.C. 193*** and ***State of Haryana –vs- Jagbir Singh and another (2003) 11 S.C.C. 261***.

(7) On the other hand, learned State Counsel opposes these arguments and supported the judgment of conviction and order of sentence passed by the trial Court.

(8) We have heard Shri Vijay Deshmukh, learned counsel for the appellant and Shri U.K.S. Chandel, learned Panel Lawyer, for the State at length and have perused the records of the sessions trial.

(9) In *C.Chenga Reddy's case (supra)* the Apex Court held that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the said case, The Apex Court held that the

Courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence. Holding that none of the circumstances relied upon by the prosecution against the appellants can be said to have been proved satisfactorily and all those circumstances which are not of any clinching nature, even if held to be proved do not complete the chain of evidence so complete as to lead to an irresistible conclusion consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with the innocence and in that manner the prosecution has not established the case against the appellant beyond the reasonable doubt.

(10) In Jagbir Singh's case (supra), an innocent child (4 years) lost his life and the allegations were about his kidnapping, demand of ransom and murder. The circumstances relied upon were (i) ransom notes in the handwriting of accused (ii) extra judicial confession made by accused before P.W.10, and (iii) recovery of dead body on the basis of information given by accused while in custody. Apart from that the accused was brought before ACJM during investigation for giving his specimen signature under section 73 of the Evidence Act. He admitted his signature before ACJM. On facts, alleged extra judicial confession was found to be unacceptable and there were unexplained contradictions about the place where the accused were arrested and the manner of recovery. The Apex Court held that the power u/s 73 of the Evidence Act could not be exercised by the court during investigation, therefore, comparison of the signature on the alleged ransom note in no way helped the prosecution. On the basis of above discrepancy, the Apex Court observed that even though the innocent child has lost his life and there may be some truth about deficiency in the evidence collection mode, but the court can act on the evidence brought before it. The Apex Court further said that even though the investigation may not be entirely blemishless, at the same time when the material brought on record is insufficient, the course adopted by the High Court cannot be faulted and ultimately the appeals filed by the State of Haryana were dismissed.

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(11) On above principles, learned counsel for the appellant argued that in fact, the evidence collected in this case are not of clinching nature which may be said to have been consistent only with the hypothesis of guilt of the accused and totally inconsistent with his innocence, therefore, conviction based upon such circumstantial evidence deserves to be set aside. He vehemently argued that in fact, the suspicion has been given the place proof in this case and the accused/appellant is entitled to acquittal on the principles enunciated by the Apex Court in the above two cases. So far as the homicidal death of the deceased is concerned, it has not been disputed by learned counsel for the appellant. He only argued about the circumstances set forth against the accused to be insufficient, untrustworthy and not consistent with the guilt of the appellant.

(12) If we examine the evidence adduced by the prosecution, the following are the circumstances which have been held to be proved against the accused/appellant:

(i) that the accused appellant was removed from service of driver by the parents of the boy (deceased) on account of alleged theft of diesel committed by him;

(ii) the accused had gone to the school at about 1.00 p.m., and had taken the boy with him on the pretext that his mother is ill and in this manner the boy was last seen together with the accused/appellant,

(iii) The accused while in custody gave memorandum u/s 27 of the Evidence Act giving information about the hiding of the dead body and the bicycle used by him.

(iv) On the basis of the aforesaid memorandum u/s 27 of the Evidence Act, the dead body as well as the bicycle was seized at the instance of the accused.

First Circumstance

So far this circumstance is concerned, it comes in the evidence of P.W.1, Yogesh Kumar Agrawal, that the accused was working as driver in their family and he was driving their Jeep. Shiv Kumar is his elder brother and Sameer was son of Shiv Kumar, who was studying in Saraswati Shishu Mandir, Kharsiya. They had removed the accused from the service of driver 3 months prior to the date of incident on account of theft of diesel, committed by him. His such evidence is corroborated by the evidence of Shiv Kumar agrawal (P.W.7), who deposed vide para 1 that the accused was previously working with them as their driver and was removed from service 3 months prior to the date of incident. He has further stated that while he was working as Driver he used to take the children of the family to their school by Jeep and after school hours, he used to take them back to the house. The questions have been put to these witnesses about lodging of the report against the accused regarding diesel theft, to which these witnesses have denied. It is argued that since they are saying that they had not lodged any report in the Police Station regarding theft of diesel, therefore, the aforesaid fact appears to be doubtful. Generally, in private services engaged by such families these incidents are not reported to the Police. It is a common nature that when such incidents come to the notice of the employer, in usual manner, they use to remove the persons without taking any police action etc., against them. On account of this conduct that they had not lodged the report in the police station regarding theft of diesel, it cannot be said that they are making false allegations and on this, they would like to falsely implicate the accused. Therefore it is established that 3 months prior to the date of incident, the accused was removed from service of driver from the family of the deceased on account of theft of diesel.

Second Circumstance

So far as 2nd circumstance is concerned, the prosecution has examined Peon of Saraswati Shishu Mandir namely KiranRathore (P.W.4). She has deposed that she was knowing the accused and

the deceased. On the fateful day, at about 1.00 p.m., she was assigned with the duty of keeping at the gate of the school. The accused came to her and said that he has to take back a boy from the school. He stated that the mother of the boy is ill, therefore, he has to take him. She specifically deposed that he had told her about taking Sameer, the deceased, with him, on which she told him to go to the office and take permission from the principle of the School. Thereafter the accused went to the Chamber of the Principal and he took the boy with him. She has deposed that when after the school hours, the family members of Sameer Agrawal came to school asking about Sameer, she told them that their driver had taken Sameer with him. In her cross examination vide para 13, she has denied the suggestion that the accused had not taken the deceased and in para 14 she has stated that earlier she had seen the accused bringing the deceased to the School. Vide para 15, she has denied the suggestion that accused had never brought the deceased to the school. In para 17 of her cross examination, she has more specifically deposed that she does not know the accused by name, but she knows him by face and she knows him because he used to come to the school for leaving the children of family of the deceased. In para 21 of her cross examination, she has completely denied the suggestion that she has not seen the deceased going with the accused. There appears to be no infirmity in her evidence on which her testimony can either be disbelieved or it may be said that she has given false evidence before the Court. Her such evidence inspires confidence of this Court and by her evidence it has been established that on the fateful day, at about 1.00 p.m., the accused had come to the school and he had taken the boy with him on the pretext that the mother of boy was seriously ill, therefore, it is established that at about 1.00 p.m., on 8.11.2000 the deceased was last seen in the company of the accused.

Third Circumstance

So far as the 3rd circumstance is concerned, the memorandum of the accused has been proved as Ex.P.3. This memorandum has been recorded on 8.11.2000 at about 11.55

p.m. Bhaisajlal (P.W.2) has deposed that on 8.11.2000 Kharsiya police had come to Raigarh in search of the accused and the accused was interrogated. He has deposed that before him the accused made statement that he was working as a Jeep Driver since 1 ½ years back in the family of Shiv Kumar Agrawal and was taking his children to the school but was removed from services 3 months back on account of theft of diesel and from that time he wanted to take revenge. He also made statement that on the fateful day the deceased was taken by him on Bicycle, he had murdered the deceased and had crushed his head and hidden the body on the hill. The witness has deposed that such statement given by the accused was recorded as ex.P.3 and he has put his signature on the said document at place "A" to "A".

The investigating officer has also supported the evidence of this witness. He deposed vide para 3 that during investigation he had gone to Raigarh where on 8.11.2000 at about 11.55 he had recorded the memorandum statement of the accused as Ex.P.3. The accused has stated that he will get the deadbody recovered from a place near Panchmukhi Hanman Mandir, Kharsiya. This memorandum statement of the accused bears the signature of accused.

If we look into the discovery part of the memorandum, which would only be admissible u/s 27 of the Evidence Act, it would appear that acuused had given a positive information to the police officer while he was in custody and the aforesaid information was recorded by the Investigating Officer in presence of two witnesses, out of which, one, P.W.2 Bhaisajlal, was examined and has proved its contents pertaining to the discovery made by it. Therefore, this circumstance is also established against the accused.

Fourth Circumstance

The last circumstance is about the discovery of the dead body at the instance of the accused. It comes in the evidence of P.W.2 Bhaisajlal that after recording such memorandum Ex.P.3, the police had gone to the place of occurrence as told by the accused in his memorandum and at the instance of the accused,

the dead body, which was hidden, was recovered. The recovery memo was prepared. He identifies his signature at "A" to "A" portion of recovery memorandum, which has been proved as Ex.P.4. He has most specifically mentioned in para 6 that the dead body was hidden inside the stones and only small portion of head was visible. His such evidence is supported by evidence of Sub-Inspector Suresh Jain (P.W.9) who has specifically stated in para 4 that on information given by the accused under Ex.P.3, he had gone to the place of occurrence at about 3.45 a.m., and had discovered the dead body of the child and the document to this effect was prepared vide Annexure P-4, which bears his signature at "B" to "B" portion, below which the time has also been mentioned. The defence has not been able to bring on record any such circumstance which may discredit the validity of recovery of the dead body at the instance of the accused. Therefore, it is established that the deadbody of the deceased Sameer was recovered at the instance of the accused which was hidden on a hill near Panchmukhi Hanman Mandir, Kharsiya.

(13) After appreciation of the above circumstantial evidence, we find that the chain of circumstances has been established in this case. The accused appellant had a motive against the deceased as he was keeping ill will against the deceased family. He had gone to school of the deceased at about 1.00 p.m., where he met with peon of the school namely Kiran Rathore (P.W.4). She had identified him and on her instructions, he went to the Headmaster and thereafter he took the deceased with him from school. He was last seen with the deceased by Kiran Rathore (P.W.4) and when the deceased did not return to the house, the uncle of the deceased namely Yogesh Agrawal (P.W.1) lodged a written report, in which, he expressed suspicion against the accused and thereafter they went to the house of the accused. The accused was not found there. He brought the driving licence of the accused from his house and showd the photograph of the accused, affixed in the licence, to the Principal and other staff of the school, who identified that it was the photograph of the person who had taken the boy.

(34)

Ultimately that licence was seized by the police and when the search was made the accused was taken into custody in the night at Raigarh where a memorandum u/s 27 of the Evidence Act was recorded by the S.H.O. in which he gave information about the dead body and the bicycle and then only the dead body was seized from a lonely place in hidden condition at the instance of the accused. Therefore, we are of the considered view that in the present case the circumstantial evidence set forth by the prosecution is consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The prosecution has been able to prove satisfactorily all those circumstances which are of clinching nature and the chain of circumstantial evidence is complete in this case, which lead to an irresistible conclusion that the accused was the author of the crime.

(14) For the foregoing discussions, we do not find any reason to interfere with the judgment passed by the trial Court. The appeal deserves to be and is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Rao/-